

§ 107.100

Appreciation and Unrealized Depreciation on all of a Licensee's Loans and Investments, less estimated future income tax expense or estimated realizable future income tax benefit, as appropriate.

Venture Capital Financing has the meaning set forth in § 107.1160.

Wind-up Plan has the meaning set forth in § 107.590.

[61 FR 3189, Jan. 31, 1996; 61 FR 41496, Aug. 9, 1996, as amended at 62 FR 11759, Mar. 13, 1997]

Subpart C—Qualifying for an SBIC License

ORGANIZING AN SBIC

§ 107.100 Organizing a Section 301(c) Licensee.

Section 301(c) Licensee means a company licensed under section 301(c) of the Act. It may be organized as a for-profit corporation or as a limited partnership created in accordance with the special rules of § 107.160.

§ 107.110 Organizing a Section 301(d) Licensee.

Section 301(d) Licensee means a company licensed under section 301(d) of the Act that may provide Assistance only to Disadvantaged Businesses. A Section 301(d) Licensee may be organized as a for-profit corporation, a non-profit corporation, or as a limited partnership created in accordance with the special rules of § 107.160.

§ 107.115 1940 Act and 1980 Act Companies.

A 1940 Act or 1980 Act Company is eligible to apply for an SBIC license, and an existing Licensee is eligible to apply for SBA's approval to convert to a 1940 Act or 1980 Act Company. In either case, the 1940 Act or 1980 Act Company may elect to be taxed as a regulated investment company under section 851 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 851). However, a Licensee making such election may make Distributions only as permitted under the applicable sections of this part (see the definition of Retained Earnings Available for Distribution, § 107.585, and §§ 107.1540 through 107.1580).

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§ 107.120 Special rules for a Section 301(d) Licensee owned by another Licensee.

A Section 301(d) Licensee may be licensed to operate as the subsidiary of one or more Licensees (participant Licensee), with or without non-Licensee participation, subject to the following:

(a) *Application.* In reviewing the license application, SBA will consider what effect, if any, a capital contribution to the proposed Section 301(d) Licensee will have on the participant Licensee.

(b) *Participant Licensees.* Each participant Licensee must propose to own at least twenty percent of the voting securities of the proposed Section 301(d) Licensee.

(c) *Capital contribution.* A subsidiary Section 301(d) Licensee must receive capital contributions in cash, in an amount at least equal to the minimum capital requirement under § 107.210. Capital contributed by a participant Licensee in excess of the required minimum may be in the form of securities of a Disadvantaged Business, valued at the lower of cost or fair value. A participant Licensee must treat its entire capital contribution to the subsidiary as a reduction of its Leveragable Capital. The participant Licensee's remaining Leveragable Capital must be sufficient to support its outstanding Leverage.

(d) *No transfer of Leverage.* A participant Licensee may not transfer its Leverage to a subsidiary Section 301(d) Licensee.

§ 107.130 Requirement for qualified management.

When applying for a license, you must show, to the satisfaction of SBA, that your current or proposed management is qualified and has the knowledge, experience, and capability necessary for investing in the types of businesses contemplated by the Act, these regulations and your business plan. You must designate at least one individual as the official responsible for contact with SBA.

§ 107.140 SBA approval of initial Management Expenses.

If you plan to obtain Leverage, you must have your Management Expenses